

N.D. Ojha Vs. Allahabad Development Authority and ors.

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Court : Allahabad

Decided On : Apr-30-2003

Reported in : (2003)2UPLBEC1325

Judge : M. Katju and ;R.S. Tripathi, JJ.

Acts : [Constitution of India](#) - Articles 14 and 226

Appeal No. : Civil Misc. Writ Petition No. 13733 of 2003

Appellant : N.D. Ojha

Respondent : Allahabad Development Authority and ors.

Advocate for Def. : A.K. Misra, Adv. and ;S.C.

Advocate for Pet/Ap. : A.K. Tripathi, Adv.

Disposition : Petition allowed

Judgement :

M. Katju and R.S. Tripathi, JJ.

1. The petitioner is a retired Judge of the Supreme Court of India. In this case on 28.3.2003 the Standing Counsel was granted three weeks to file a counter affidavit but no counter affidavit has been filed. Thereafter on 23.4.2003 he was again granted one week's time to file a counter affidavit, but as yet no counter affidavit is

forthcoming. We are not inclined to grant any further time. Hence, we are treating the allegations made in the writ petition to be correct.

2. The petitioner is challenging the impugned notices dated 22.4.1999 and 3.7.2000 (Annexures '6' and '9' to the writ petition) issued by the Allahabad Development Authority. The petitioner has also prayed for a mandamus commanding the Allahabad Development Authority to execute the sale deed regarding premises No.AD-6, Ekanki Kunj, A.D.A. Colony, 24, Muir Road, Allahabad, constructed under Self-Financing Housing Scheme on the price of land already paid before possession.

3. In paragraph 2 of the writ petition it is alleged that the Allahabad Development Authority, Allahabad (hereinafter referred to as the A.D.A.) floated a Self-Financing Housing Scheme known as 'Ekanki Kunj Housing Scheme' in the year 1992. Applications were invited through an advertisement in the daily newspaper and the terms and conditions were incorporated in the brochure issued by the ADA. The said Housing Scheme invited tenders for allotment of plot as well as constructed house of two categories viz., 'Ashirvad Duplex and Kamna Duplex'. Initially the scheme was for Duplex houses but later on it was converted into a single storey house. The cost of Ashirvad Duplex was initially Rs. 8,50,000/- in which Rs. 1,99,000/- was the cost of the land and thereafter it was converted to single storey and cost of the same was reduced to Rs. 8,20,000/-. Initially there were two rooms and latrine, bath on the first floor. Kamna Duplex was for Rs. 7.50,000/- which was later on reduced to Rs. 6,07,741/- for single storey.

4. The petitioner applied in another scheme viz. 'Shringver Puram Scheme' and subsequently applied in Ekanki Kunj Housing Scheme Rs. 3,660/- which was deposited in regard to Shringver Puram Scheme was subsequently adjusted in Ekanki Kunj Scheme and additional registration and reservation amount was deposited on 10.9.1992 i.e., Rs. 1,16,360/- with the Oriental Bank of Commerce in pursuance of the letter dated 5.9.1992 issued by the Joint Secretary, A.D.A. and the letter dated 11.1.1993 issued by the Secretary, A.D.A. (The true copies of the receipts and the letters are Annexures 1 to 4 to the petition).

5. In paragraph 5 of the writ petition it is stated that the petitioner applied for a house in the Ekanki Kunj Scheme for Ashirvad Duplex Minder Self-Financing Housing Scheme and in compliance of the letters dated 5.9.1992 and 11.1.1993 issued by the A.D.A., the requisite reservation amount was deposited on 10.9.1992 (vide Annexure-2). Thereafter the Duplex houses were converted into single storey house and the estimated cost from Rs. 8,50,000/- was reduced to Rs. 3,20,000/-. The petitioner was also informed that after costing of the construction the balance amount, if any, shall be adjusted towards lease/free hold charges. According to the terms and conditions incorporated in the brochure the allottees were required to deposit the entire amount before delivery of possession and in case the house was ready before the instalments were paid then the allottees were required to pay the balance in lumpsum before possession was handed over. The petitioner made deposits the details of which are given in Paragraph 7 of the writ petition, by 24.9.1994 as Rs. 8,22,270/-, including one instalment, which was required to be deposited by 31.12.1993. This was deposited with the permission of the A.D.A. on 1.1.1994 and the balance amount with next instalment on 22.3.1994.

6. It is alleged in Paragraph 8 of the writ petition that the entire amount was deposited, and the petitioner wanted possession of the said house as the same was urgently required and further construction was required to be raised at first floor to fulfill the requirement of the petitioner. When the application was moved for permission to raise further construction at first floor then vide letter dated 10.10.1994 the Joint Secretary, A.D.A. informed that though the entire amount had been deposited but it was not possible to hand over the possession hence in the circumstances there was not any hurdle to sanction the map for raising the construction in the first floor. The copy of the letter dated 10.10.1994 issued by the Joint Secretary is Annexure-5 to the petition. The possession letter was delivered to the petitioner on 2.2.1996. In Paragraph 10 of the petition it is alleged that before and after possession the petitioner got constructed certain accommodation as was required on the first floor after getting the map sanctioned from the A.D.A. The petitioner started living with other family members, and Municipal Taxes are regularly being paid by the petitioner. A request was made by the petitioner to get the deed of transfer of ownership registered in his name but due to some reason it

was not executed even though no detail of account was given to the petitioner regarding the actual costing of the building.

7. When repeated request were made on behalf of the petitioner for execution and registration of the sale deed then to his further surprise after a lapse of three years he received a notice dated 22.4.1999 issued by the Zonal Officer, A.D.A. demanding an additional amount of Rs. 1,43,000/- towards difference of cost, Rs. 47,880/- towards free hold charge, Rs. 300/- miscellaneous charges, Rs. 125/- towards Sanitary charges, total amount Rs. 1,91,305/-. The true copy of the letter issued by the Zonal Officer dated 22.4.1999 is Annexure -6 to the petition.

8. After receiving the notice the petitioner gave an application dated 6.5.1999 to the Zonal Officer, copy of which is Annexure-7. Thereafter a vague reply was given by the Zonal Officer vide letter dated 2.3.2000 which is filed as Annexure-8. The nephew of the petitioner met the authorities concerned several times on behalf of the petitioner but in spite of repeated request it has not been informed by the A.D.A. why the additional demand was being made when the entire amount under Self-Financing Scheme was deposited by the petitioner well within time. No account was given regarding the cost of construction.

9. In Paragraph 21 of the writ petition it is alleged that respondent A.D.A. despite its clear cut acknowledgment having received the entire amount due from the petitioner before possession was handed over, and there being express declaration to the said effect has unilaterally chosen to raise the cost of the land initially demanding Rs. 1,43,000/- thereafter Rs. 2,31,660/-. It is alleged that there was no stipulation in between the petitioner and the A.D.A. regarding escalation of price/rate at a subsequent date and belated stage after 10 years.

10. In our opinion, this petition deserves to succeed as the respondents have demanded the impugned money arbitrarily and that too after a belated stage when the petitioner had paid the entire amount demanded from him. If the authorities are permitted to act in such an arbitrary manner then no citizen will be able to purchase a house. The petitioner has already paid a sum of Rs. 8,22,270/- and that was the amount demanded from him. The impugned notices dated 22.4.1999 and 3.7.2000 (Annexures 6 and 9 to the writ petition) are quashed. The

respondents are directed to execute the sale deed as free hold at the original cost of the land (already paid) in the name of the petitioner regarding the premises to question within a month from today. The excess amount deposited by the petitioner towards construction shall be refunded to him forthwith. No order as to cost.

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